

Amendment and Response

Applicant: Mark Henry Butler

Serial No.: 10/695,948

Filed: October 30, 2003

Docket No.: 300202359-2

Title: DELIVERY CONTEXT AWARE ACTIVITY ON NETWORKS: DEVICES, SOFTWARE, AND METHODS

REMARKS

The following remarks are made in response to the Office Action mailed February 2, 2010. Claims 1-5, 54 and 57 were rejected. With this Response, claim 54 has been amended and claims 59 and 60 have been added. Claims 1-5, 54, 57, 59 and 60 remain pending in the application and are presented for reconsideration and allowance.

Claim Rejections under 35 U.S.C. § 103

Claims 1-5, 57-58 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2002/0032754 to Logston et al. (“Logston”) in view of Windows NT Server and further in view of “Configure IT Quick: Give the PathPing utility a GUI front end” by Greg Schultz (“Shultz”). Applicants respectfully traverse these rejections.

To establish *prima facie* obviousness, all claim limitations must be considered. MPEP 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385, (CCPA 1970)). The Office Action admits that neither Logston nor Windows NT Server disclose a report that includes information concerning characteristics of any intermediary devices in a network path between the client devices and the server.

The Office Action relies on Shultz for a disclosure of this claim element. However, the PingPath utility described in Shultz also does not appear to disclose such a report. Instead, Shultz discloses “providing you with information on both timings and packet losses for each hop...” Shultz at p. 3. This does not appear to disclose “characteristics of the client devices.” First, Shultz does not teach the “hops” being *client* devices, and there is no disclosure of characteristics of the devices themselves; rather, information about packet timing is provided.

Further, the Office Action alleges that Windows NT Server discloses “wherein the report is sent out periodically to a master monitoring processor.” In support of this, the Office Action cites page 12 of Windows NT Server, which discloses a periodic update dialog box. However, this dialog box simply allows a user to “Enter the Periodic Update Interval value in the Update Time box. Counter values are sampled and logged at this interval.” There is no disclosure here of this periodically gathered information being “sent out periodically to a master monitoring processor, to thereby notify the master monitoring

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processor of context delivery related information that has changed since the master monitoring processor was last updated” as recited in claim 1.

Instead, it appears that the logs remain on the particular monitored device, and these logs are not periodically sent out. Page 980 [page 10 of the excerpt] of Windows NT Server states, “It is much more convenient to log the activity that you want to monitor and display the activity logs at your leisure.” Thus, the logs are not periodically sent out or displayed, but rather, as requested by a user at his leisure. This actually teaches away from periodically providing the information in a report. Prior art references must be considered in their entirety, including portions that teach away from the claim elements. MPEP 2141.02VI.

The combination of references cited in the Office Action fails to disclose each claim element. Therefore, the Office Action fails to establish *prima facie* obviousness of claim 1, or any claim dependent thereon.

Claim 54 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Logston in view of Windows NT Server, Shultz, and further in view of Applicant’s Admitted Prior Art (hereinafter AAPA). Claim 54 depends on claim 1 and is therefore allowable for at least the same reason.

Further, claim 54 has been amended to include “wherein the server is configured to modify the cache memory in response to the delivery context aware activity software.” There is no identification in the Office Action of such a disclosure in the prior art.

New Claims

Claims 59 and 60 have been added herein. These claims ultimately depend on claim 1 and are therefore allowable for at least the same reasons.

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CONCLUSION

In view of the above, Applicant respectfully submits that all of the pending claims are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of the claims is respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 08-2025.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Mark L. Gleason at Telephone No. (612) 767-2503, Facsimile No. (612) 573-2005.

Respectfully submitted,

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